



Appeal No. PPRA/AP-36/2024
Government of Pakistan
Public Procurement Regulatory Authority
(Appeal & Review Petition Secretariat)
1st Floor, FBC Building, G-5/2, Islamabad
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ORDER

M/s New Light House (Pvt.) Limited

...the Appellant

Vs.

Sui Northern Gas Pipelines Limited (SNGPL)

...the Respondent

<u>Date of Hearing</u> 20.02.2024	<i>Syed Amir Waheed (CFO), Mr. Javed Iqbal (Sr. Manager), Mr. Zahid Imran, Advocate</i> <i>(On behalf of the Appellant)</i> <i>Mr. Ammar Faisal, CE(M), Mr. Ammar Ahmad, SE (Maintenance), Mr. Nabeel Ishtiaq, DCO (Procurement)</i> <i>(On behalf of the Respondent)</i>
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APPEAL FILED UNDER RULE 48(7) OF THE PUBLIC PROCUREMENT RULES, 2004

The above mentioned learned counsel and representative(s) of the parties tendered appearance before the Appellate Committee at the date and time fixed for hearing.

2. At the very outset of the hearing learned counsel of the Appellant submitted that the Respondent i.e. Sui Northern Gas Pipelines Limited (SNGPL) issued a Tender Notice No. SN-4390/22 on 24.06.2022, for the procurement of welding generators, attracting participation from two bidders

who submitted proposals with different specifications. The technical proposals of both the bidders were accepted, namely M/s SD International Karachi offering Miller brand with a Twin Holder with Single Casing configuration, and M/s M. Sharif & Co. offering Lincoln Electric brand proposing a Single Holder with Inverter being locally modified and consisting of two parts. It is noteworthy that the original SNGPL specifications mandated a Twin Holder with Single Casing configuration. However, M/s M. Sharif & Co. solution, featuring a Single Holder with Inverter and local modification, did not align with the specified requirements, yet SNGPL accepted their technical proposal.

3. The counsel of the appellant also submitted that after acceptance of both the proposals, M/s SD International raised substantial objections regarding the product (welding generators) offered by M/s M. Sharif & Co., asserting that the product did not adhere to the specified requirements, yet it was technically accepted. Consequently, on 16.12.2022, in response to the technical objections lodged by M/s SD International, SNGPL formally annulled the tender, classifying M/s M. Sharif & Co. as technically non-responsive. The acceptance of a product that did not align with specified requirements prompts a valid inquiry into the procurement committee's decision-making process at SNGPL, potentially suggesting malfeasance.

4. The counsel of the Appellant further submitted that subsequently SNGPL initiated a bidding process through Tender Notice No. SN-4552/23, dated 26.09.2023 during which the specifications of welding generators underwent unexpected alterations. Strikingly, the specifications initially



identified as non-responsive for M/s M. Sharif & Co., subsequent to objections raised by M/s SD International, were incorporated into the revised specifications. This modification, in our perspective, seemingly aims to accommodate M/s M. Sharif & Co., raising concerns regarding the fairness and impartiality of the procurement process. The revisions to the specifications, led a significant modification in criteria that appears to favour M/s M. Sharif & Co. in the subsequent procurement process.

5. The Counsel of the Appellant argued that M/s New Light House (Pvt.) Ltd. expressed interest in participating in the subsequent Tender Notice No.SN-4552/23 dated 26.09.2023, upon a comprehensive review of the revised bidding documents, identified potential favouritism in the specifications. After that, on 03.11.2023, the Appellant formally expressed their concerns through a letter addressed to the General Manager (Procurement), wherein, it was specifically requested for incorporation of defined criteria for the evaluation process including:

- a) The submission of test results and performance data affirming the successful operation of the package by the manufacturer;
- b) The provision of documentary evidence substantiating the manufacturing unit's capability and experience in the pertinent line of manufacturing spanning over a decade;
- c) The furnishing of references from a minimum of five end users outside the manufacturer's country, to whom comparable vehicles (welding generators) have been sold within the preceding ten years; and,
- d) The assurance that the entire package, contained within a single casing, possesses the capability to operate on the right of way ('ROW') across diverse terrains.



6. The counsel of the Appellant further argued that the criteria which the Appellant sought to be incorporated into the bidding document was fundamental requisite that respondent has historically utilized for decades in the procurement of welding generators. Remarkably, this essential criteria was unexpectedly expunged, seemingly to accommodate a specific bidder. The response to the aforementioned letter was received via email on 13.11.2023. In this communication, it was explicated that the alterations in specifications were implemented in a generic manner with the intent of fostering healthy competition.


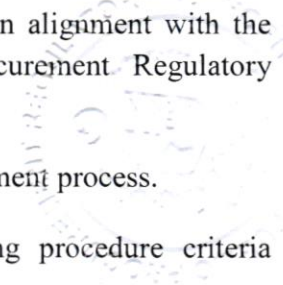
7. The counsel of the Appellant further added that conveying dissatisfaction with the aforementioned response, the Appellant expressed their grievances through an email dated 14.11.2023. Being concerned about the persistent procedural challenges, the Appellant subsequently formulated and dispatched a letter to the Managing Director SNGPL dated 05.12.2023. Unfortunately, the response was received once again via email on 18.12.2023 from Mr. Kashif Amin (Procurement Officer SNGPL). Significantly, it was noted that no redressal committee was constituted, which is tantamount to violation of Rule 48 (3) of the Public Procurement Rules, 2004.

8. At last, the counsel of the Appellant further argued that throughout the preceding two decades, the SNGPL has steadfastly compelled vendors to furnish compact single units twin holder welding generators. Many international manufacturers produce twin holder welding generators housed in a single casing, including those from Japan, Italy, China, and more. The current

departure from this longstanding practice entails an experimental deviation, incorporating a single holder and an inverter through local modification, hence filed the instant Appeal.

9. On the other hand, the representative of the Respondent i.e., Sui Northern Gas Pipelines Limited (SNGPL) presented their arguments at length and denied all the assertions made by the Appellant side regarding malpractices in the instant procurement process. The assertions made by the Appellant i.e., M/s. New Light House are factually incorrect. The specifications outlined in the SNGPL twin holding welding plant specifications dated 18.06.2022, permitted modifications / upgrades subject to specific conditions as articulated in Clause 2 of the bidding documents. These provisions were subsequently generalized in the revised specifications dated 19.09.2023.

10. The representative of the Respondent also submitted that the Appellant had not participated in the tender inquiry no. SN-4390/22, it is devoid of any evidential basis to substantiate the allegations levelled. The sole information accessible to the appellant is reliant on hearsay. The specifications have been amended with the following objectives / assumptions:

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- I. To broaden / generalize their applicability in alignment with the regulations stipulated by the Public Procurement Regulatory Authority (PPRA).
 - II. To foster fair competition within the procurement process.
 - III. To meet the on-site and qualified welding procedure criteria mandated by SNGPL.
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11. The representative of the Respondent further submitted that the primary aim of instant Appeal appears to be an effort to restrict competition and to amend specifications in favour of the Appellant, thereby contravening the principles of competitive bidding and violating the stipulations regarding non-generic specifications as delineated by the Public Procurement Regulatory Framework. The allegations proffered by the Appellant, insinuating partiality towards a specific bidder, lack substantiated evidence and are baseless. The Appellant motivations appear solely directed towards marketing their unit without facing competitive scrutiny, thereby facilitating quotation of prices devoid of competitive pressure. Such actions are poised to result in substantial losses, not only for the company but also for Pakistan as a whole. The pricing of M/s Miller's welding plants, presently offered by M/s New Light House, has witnessed a significant escalation over the past decade.

12. The representative of the Respondent further added that after examination of the pertinent facts concerning welding plants within the Respondent's company, it is apparent that the Appellant has previously furnished Lincoln's Welding Plants in the years 2003, 2007, 2015 and 2016, encompassing single holders, double holders, and double holders with auxiliary power. The Respondent, being a prominent entity engaged in pipeline construction nationwide, maintains an extensive transmission pipeline network spanning approximately 12,000 Kilometres. Throughout the welding processes involved in pipeline projects, our personnel confront various challenges, meticulously monitored to uphold our quality benchmarks. The specification of welding equipment stands as a pivotal factor in optimizing



welding standards. Miller's welding plants offered by the appellant falls within the specifications outlined by the respondent serves as prima facie evidence that the specifications are not discriminatory or favouring to any particular supplier.

13. The representative of the Respondent further submitted that they duly complied with the Public Procurement Rules, 2004. It is relevant to mention that, the Respondent's company constituted Grievance Redressal Committee in line with Rule 48(1) of Public Procurement Rules, 2004, to redress the grievance of the bidders. The constitution of Grievance Redressal Committee is duly uploaded / displayed on the Respondent's website and on PPRA's website as well. Hence, no violation was committed by the Respondent. It is also relevant to mention that procurement department of the Respondent company acts as focal person for communication with the bidders / suppliers after taking input from the concerned department, hence there is no conflict of interest or any violation committed by the Respondent. The bidder neither approached the Respondent's Grievance Redressal Committee nor invoked Rule 48 of Public Procurement Rules, 2004 in true letter and spirit, as mentioned in their communications referred in the Appeal.

14. The respondent concluded their arguments with the submission that the Appellant previously held authorization for Lincoln's Welding Plants and supplied numerous welding plants, including Vantage 300 (single holder), Vantage 500 with Inverter (single holder with inverter as the second holder for welding), and Vantage 7001 (Dual holder). They are now objecting to the same

plants they supplied to the Respondent (approximately 60 welding plants of Lincoln Company's double holder with similar arrangement). Further, historically, when the Appellant hold authorization for Lincoln's welding plants, they pursued the matter at various forums to exclude Miller from competition. Now, with authorization for Miller's Welding Plants, they are adopting the same approach with Lincoln's welding plants to eliminate competition once more. The Appellant's conduct is obstructing the procurement process of the Respondent's company, potentially leading to delays in the completion of National Level projects. At the last, it is very much important to mention that a welding plant requires a significant investment ranging from 8 to 9 million rupees. By accommodating the said changes in specifications, competition is restricted to a single bidder, imposing a potential financial burden on the company due to the absence of competitive bidding, hence, requested for dismissal of the instant Appeal.

15. During the course of arguments, the Appellate Committee (the Committee) repeatedly inquired from the counsel of the Appellant regarding the specific grievances related to ongoing procurement process but the Appellant failed to establish the grounds of the case before the Committee in the instant Appeal. The Committee observed that the Respondent has rightly justified to generalize the specifications in the bidding documents issued on 19.09.2023.

16. The Committee also observed that the appellant has failed to lodge a grievance complaint in accordance with Rule 48 of the Public Procurement



Rules, 2004. The appellant has also failed to satisfy the Committee about the grounds of this Appeal that in what manner, the specifications are discriminating or restricting his participation from the procurement process.

17. Further, the Committee pointed out that the procuring agency shall evaluate and compare the bids and allow preference to domestic suppliers or contractors, while competing with the international bidders in accordance with the policies of Federal Government or regulations made by the Authority in terms of Rule 24 of the Public Procurement Rules, 2004. However, the procuring agency is required to draft evaluation criteria in a generic way for the procurement in hand without compromising the quality, safety, reliability, availability of spare parts, after sales service, efficiency, cost-effectiveness etc.

18. In light of the above and the reasons recorded, the Committee is of the considered opinion that the instant Appeal is hereby dismissed being devoid of merit.



(Dr. Muhammad Aslam Waseem)
Director General (Legal)
(Member)



(Dr. Asim J. Abro)
Director (M&E)
(Member)



(Maqbool Ahmad Gondal)
Managing Director (PPRA)
(Head of the Committee)

Dated: 29.02.2024

Note: Each page of the order has been signed by all members of the Appellate Committee. The order comprises of Nine (09) pages.